

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

RONNIE LOUIS MARVEL KAHAPEA,

Applicant,

v.

No. 1:19-mc-00028-MV

PENNYMAC LOAN SERVICES, LLC, and
PLAZA HOME MORTGAGE, INC.,

Respondents.

MEMORANDUM OPINION AND ORDER IMPOSING FILING RESTRICTIONS

THIS MATTER comes before the Court on pro se Applicant's failure to respond to the Court's Order to Show Cause why the Court should not impose filing restrictions. *See* Doc. 36, filed March 30, 2020 ("Order to Show Cause").

After describing the procedure for imposing filing restrictions and Plaintiff's abusive filing history, the Court set forth proposed filing restrictions and ordered Plaintiff to show cause why the Court should not impose those filing restrictions. *See* Order to Show Cause at 6-7. Plaintiff did not file a response to the Order to Show Cause by the April 14, 2020, deadline.

The Court now imposes the following filing restrictions on Applicant.

Applicant will be enjoined from making further filings in this case except objections to this order, a notice of appeal and a motion for leave to proceed on appeal *in forma pauperis*; and the Clerk will be directed to return without filing any additional submissions by Applicant in this case other than objections to this order, a notice of appeal, or a motion for leave to proceed on appeal *in forma pauperis*, unless:

1. a licensed attorney who is admitted to practice before this Court and has appeared in this action signs the proposed filing; or

2. Applicant has obtained permission to proceed *pro se* in this action in accordance with the procedures for new pleadings set forth below.

Applicant also will be enjoined from initiating further litigation in this Court, and the Clerk will be directed to return without filing any initial pleading that he submits, unless either a licensed attorney who is admitted to practice before this Court signs the pleading or Plaintiff first obtains permission to proceed *pro se*. See *DePineda v. Hemphill*, 34 F.3d 946, 948-49 (10th Cir. 1994). To obtain permission to proceed *pro se* in this Court, Applicant must take the following steps:

1. File with the Clerk of Court a petition requesting leave to file a *pro se* initial pleading, a notarized affidavit, the proposed initial pleading, and a copy of these filing restrictions;


2. The affidavit must be notarized, be in proper legal form and recite the claims that Applicant seeks to present, including a short discussion of the legal bases for the claims, and the basis of the Court's jurisdiction of the subject matter and parties. The affidavit must certify that, to the best of Applicant's knowledge, his claims are not frivolous or made in bad faith; that they are warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; that the new suit is not initiated for any improper purpose such as delay or needless increase in the cost of litigation; and that he will comply with all Federal Rules of Civil Procedure and the District of New Mexico's Local Rules of Civil Procedure. If Applicant's claims have previously been raised or the defendants have previously been sued, the affidavit must certify that the proposed new suit does not present the same claims that this or any other court has decided and explain why the new suit would not be an abuse of the system;

3. The Clerk of the Court shall open a new civil case, file the petition, the affidavit, the proposed pleading and the copy of these restrictions in the new civil case, and randomly assign a Magistrate Judge to determine whether to grant Applicant's petition to proceed *pro se* in the new

civil case. *See* Mem. Op. and Order, Doc. 5 in *In re Billy L. Edwards*, No. 15cv631 MCA/SMV (D.N.M. November 13, 2015) (adopting procedure, similar to that of the Tenth Circuit, of opening a new case and filing the restricted filer's petition to proceed *pro se*). If the Magistrate Judge approves Applicant's petition to proceed *pro se*, the Magistrate Judge shall enter an order indicating that the matter shall proceed in accordance with the Federal Rules of Civil Procedure and the District of New Mexico's Local Rules of Civil Procedure. If the Magistrate Judge does not approve Applicant's petition to proceed *pro se*, the Magistrate Judge shall instruct the Clerk to assign a District Judge to the new case.

IT IS SO ORDERED.

IT IS ALSO ORDERED that Applicant may, within 14 days of entry of this Order, file a response to Respondent PennyMac Loan Services, LLC's Application for an Award of Attorneys' Fees and Costs Pursuant to the Court's March 30, 2020 Order Granting Respondent's Motion for Rule 11 Sanctions, Doc. 37, filed April 14, 2020.



MARTHA VÁZQUEZ
UNITED STATES DISTRICT JUDGE